THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

EXCISE

AMERICAN EMBASSY

Rome, Italy, February 16, 1948

Personal - Official
CONFIDENTIAL

Dear Vernon:

I wrote a despatch on February 3 (No. 186) transmitting all the Treaty documents but there has been some delay in getting it off.

[redacted]

B-1
A-3
A-5
B-5

[redacted]

B-1
A-3
A-5
B-5

[redacted]

Mr. Vernon G. Setser,
Chief, Commercial Treaty Section,
Commercial Treaty Division,
Department of State,

[redacted]

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY C. M. Dunn DATE 1/25/83
RDS☐ or XDS☐ EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED☐ RELEASABLE☐
RELEASE DENIED☑ in Part
PA or FOI EXEMPTIONS B-1 A3, A5
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[redacted]

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A3,A5
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On another matter, I must report that many Italians have approached me for clarification of the precise meaning of the last sentence of paragraph 4, Article V. The 'not engaged in non-profit activities' clause. I remember that when the question was raised during our meetings, you had an explanation and made it, but if I recall correctly, you were a little doubtful yourself and, in any case, the Minutes carry no explanation. I have been specifically asked to get a clarification, since, on the face of it, the clause appears all wrong. Will you let me know?

Finally, regarding declassification of the Minutes, which have now been raised to confidential, it was our thought that we should be able to say that we have no "secret understandings" over and above the published English text. We reported that we intended to declassify them after the signature (although not of course give them any distribution), and heard no demurrer from you. Nevertheless, when the question of giving a copy to any outsiders arose, I suggested that it might be harmful to our later negotiations and said that we should have an OK from the Department before any such step. On receipt of your cable, I immediately arranged with Melano to withdraw all copies currently in the hands of interested Italian Government ministries, and they have now been marked confidential. In addition, I am writing a Note Verbale to the Foreign Office for circulation to the interested ministries.

In that connection, Melano told me that the Ministry would of course keep the Minutes confidential and consult with us before making any portion of them public, etc. On one point, he said the Ministry had already made use of the Minutes (without consulting us): the Italian Embassy at Moscow had received a note from the Soviet Government (or some communication) insisting that the new Treaty would prevent Italy from becoming party to any Customs Union without the "permission" of the United States Government. The Foreign Office promptly

informed

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informed its Embassy at Moscow that, as the Minutes of the meetings showed, it was only prescribed in the Treaty that there should be prior consultation, which "does not imply at all....prior consent" (Minutes of October 17, page 9). I told Melano not to worry about the matter, since we could agree heartily to the action taken. Nevertheless, in such cases in the future or when the time comes for the Government to defend and explain the Treaty before Parliament in connection with ratification, it is going to be difficult for the Government to consult with us on each occasion and to obtain our blessing. I feel that we would be overoptimistic if we expect that there will not be other cases when the Minutes will be used without our prior knowledge. Notes verbale, assurances and good will to the contrary notwithstanding...

I understand that the Ambassador is writing a complimentary despatch concerning the work of those who participated in the negotiations.

Until next May or June when I see you in the Department,

Best regards,

Gardner

H. Gardner Ainsworth
Second Secretary of Embassy

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Article XI, paragraph 5

The phraseology for item (a): "extend specific advantages regarding taxes, fees and charges to nationals, residents and companies of other countries on a basis of reciprocity" is satisfactory. The term "fees" should be used instead of "dues," as indicated. With respect to item (c), there is no objection in principle to stating the provision so as to assure Nicaragua's right to extend special exemptions to residents of the other Central American countries. The proposed interpretation of "contiguous" for this purpose is objectionable, however, because the technical meaning of the word is "having a common boundary," and Nicaragua does not have common boundaries with all the other countries of Central America. The language originally proposed by the Department for this clause is: "(c) apply special provisions in allowing to non-residents, exemptions of a personal nature in connection with income and inheritance taxes" (Spanish text: "(c) aplicar disposiciones especiales en la concesión, a los no residentes, de exenciones de naturaleza personal en cuanto a los impuestos sobre la renta y herencias"). This phraseology is, of course, sufficiently broad to allow the extension of the special treatment to all of Central America. The problem arises from the fact that Nicaragua substituted for the above the language found in the U.S.-Japan treaty, which is not sufficiently broad. The Embassy believes that the restoration of the phrase in the original U.S. draft would solve the problem.

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Article XII, paragraph 6

This paragraph may be deleted.

Article XXI, paragraph 4

See separate Memorandum dated April 11, 1955.

Article XXII, paragraph 2

Second word in the second line of the revised draft treaty should be corrected to "within."

Article XXV

In the absence of agreements to be terminated, this article should be suppressed, and the succeeding article given the number XXV.

Protocol, paragraph 2

The English version should be altered to read: "It is understood that Article V, paragraph 2, does not require a Party to enforce an arbitral award that is contrary to public order." "Enforce" corresponds to the terminology used in Article V. Its use need not prevent use of "ejecute" in the Spanish version.

Protocol, paragraph 6

An alternative to this paragraph is proposed under Article XI, paragraph 5 above, and if found acceptable, paragraph 6 should be omitted.

The Department of State wishes the addition of the following new paragraph to the Protocol:

The provisions of Article II, paragraph 1(b), shall be construed as extending to a national of either Party seeking to enter the territories of the other Party solely for the

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purpose of developing and directing the operations of an enterprise in the territories of such other Party in which his employer has invested or is actively in the process of investing a substantial amount of capital, provided that such employer is a national or company of the same nationality as the applicant and that the applicant is employed by such national or company in a responsible capacity."

The purpose of this provision is to clarify the liberal interpretation that was recently approved in connection with United States law relating to treaty investor visas. Without such clarification, the treaty investor right of entry might appear to be limited by paragraph 1 (b) of Article II to those nationals who invest their own personal funds.

This provision has been included in the recently signed German and Haitian treaties, and its inclusion in the present treaty is desirable for purposes of uniformity. In keeping with the practice of arranging protocol provisions in the numerical order of the articles to which they refer, this provision will be paragraph 1 of the Protocol.

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To be sent by [illegible] to Embassy-Managua for clearance [illegible] and request for info re Date of signature name and title of Nicaraguan signatory

DRAFT PRESS RELEASE

SIGNING OF TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF NICARAGUA

A treaty of Friendship, Commerce and Navigation between the United States [of America] and the Republic of Nicaragua was signed in Managua today. Ambassador Thomas E. Whelan signed the treaty for the United States and _____ _____ _____, Minister of _____, for Nicaragua.

The treaty is designed to provide a comprehensive, integrated legal framework within which general economic relationships between the two countries may develop along mutually beneficial lines and in accordance with advanced and enlightened standards.

The treaty contains 25 articles and a protocol which cover in some detail a wide range of subject matter. In brief, each of the two countries: (1) agrees to accord within its territories to citizens and corporations of the other, treatment no less favorable than it accords to its own citizens and corporations with respect to engaging in commercial, industrial and ~~financial~~ activities; (2) formally endorses standards regarding the protection of persons, their property and interests that reflect the most enlightened legal and constitutional principles; and (3) reasserts its adherence to the principles of non-discriminatory treatment of trade and shipping.

From the standpoint of aiding the economic interests of Nicaragua, the treaty represents another step in the development of that country's

plans